Supreme Court, U.S.
FILED
AUG 8 1980
MICHAEL RODAK, JR., CLERK

Docket No. 79-2055
United States Supreme Court

NICHOLAS MAZUR,
APPELLANT/PRO se
vs.
Commonwealth of Pennsylvania,
Department of Transportation,
Civil Service Commission,
Govenor's Administration Office,
and American Federation of State,
County, and Municipal Employees Union,
(AFSCME,),
Appellees.

Brief Supplement of Appellant
Nicholas Mazur

Denial of Motion, July 31, 1980, Case No. 80-1474
From the U.S. Court of Appeals, for the Third Circuit.

Appellees:
R. W. Cunliffe,Deputy Chief Counsel,
W. Williams, Chief Counsel,
R. Thornburgh, Govenor of Penna.,
F. A. Fisher, Asst. Atty. General,
E.G. Biester,Jr, Atty. General,
Office of Chief Counsel
Dept. of Transportation
Commonwealth of Penna.
Harrisburgh, Pa. 17120, and,
R. Kirschner, Esq.,
J.K. Walters, Esq.
1500 Walnut Street,
Philadelphia, Pa. 19102, and,
T.F. Quinn, Clerk
U.S. Court of Appeals, for the
Third Circuit,
21400 U.S. Courthouse
Phila.,Pa. 19106

NICHOLAS MAZUR, APPELLANT.
819 N. 21st Street,
Allentown,Pa. 18104
215-433-1587.

Docket No. 79-2055
United States Supreme Court

August 6, 1980
819 N. 21st Street,
Allentown,Pa. 18104
215-433-1587

Michael Rodak, Jr.,Clerk
Office of the Clerk
United States Supreme Court
1 First Street, N.E.,
Washington, D.C. 20543

Re: N. Mazur, Appellant, vs.
Commonwealth of Pennsylvania,
Department of Transportation,
Civil Service Commission,
Governor's Office of Administrarion,
and, AFSCME,..Appellees
Docket No. 79-2055
(U.S.C.O.A. (3rd. ckt.) Civil Case
801474.).

Dear Mr Rodak:

Enclosed for filing, please find a supplement to my brief Of " Writ of Certiorari, before judgment" in the above captioned matter, containing a motion denial, dated July 31,1980, from the U.S. Court of Appeals(3rd. Ckt.) , Case No. 80-1474.

Supplement is to be included in the broad powers of Certiorari, for judicial review and decision for granting relief to the Appellant.

Thaniing you for your cooperation on said matter.

Very truly yours,
Nicholas Mazur
Nicholas Mazur,
Appellant/Pro se.

cc: R. W. Cunliffe,
J.K. Walters,
B. Raup,
W. Williams,
F. Fisher,
R. Kirschner,
E. Biester,
T.F. Quinn, Clerk(U.S.C.O.A.).

Docket No. 79-2055
United States Supreme Court

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Docket No. 79-2055

United States Supreme Court

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Docket No., 79-2055
United States Supreme Court

JURISDICTION

Jurisdiction of the Court is invoked pursuant to 28 U.S.C. §1253 ; § 1254 (2) & § 2103.

Wherein, there are two separate judgments, one reviewable, by Appeal, and the other by Certiorari. Petition for Writ of Certiorari, before judgment, has been , previously, filed, to which this supplement, U.S. Court of Appeals , for the Third Circuit, motion denial of summary judgment, dated July 31,1980; is to considered in the broad powers of judicial review by Certiorari.

Jurisdictional review , by the Supreme Court of final judgment or decree rendered by lower Courts may be conducted, where the validity of statutes , of any state, on the ground of its' being repugnant to the Constitution, treaties, or Laws of the Unites States , and the decision is in favor of validity.

Docket No. 79-2055
United States Supreme Court

PROOF OF SERVICE

I, NICHOLAS MAZUR, Pro se, Appellant,, hereby, certies, that, true and correct copies of foregoing " supplement to my brief, " Motion denial of summary judgment from U.S.C.O.A. third circuit, and attachments" has been forwarded, this date, by first class mail, postage pre-paid, to :

R. W. Cunliffe,Deputy to Chief Counsel,
B. Raup, Asst. Atty. General,
F. Fisher, Asst. Atty General.
W. Williams, Chief Counsel,
E. Biester, Atty. General.
R. Thornburgh, Governor.
Commonwealth of Penna.
Office of Chief Counsel
Department of Transportation
Harrisburg, Pa. .. and,
R. Kirschner, Esq.,
J.K. Walters, Esq.,
1500 Walnut Street,
Phila.,Pa. 19102... and,
T. F. Quinn, Clerk
U.S. Court of Appeals, 3rd ckt.,
Phila.Pa. 19106

Signed by:
Nicholas Mazur
Nicholas Mazur,
Appellant/Pro se
819 N. 21st Street,
Allentown,Pa. 18104
August 6, 1980

Signed before me this 6th day of August 1980
at Allentown, Pa.
[illegible], Notary Public
My Commission expires 16 June 1984

Docket No. 79-2055
United States Supreme Court

Nicholas Mazur,	:	
Appellant,	:	
vs.	:	Docket No. 79-2055
Commonwealth of Pennsylvania,	:	(U.S.C.O.A. (3rd. ckt.)80-1474.)
Department of Transportation,	:	
Civil Service Commission,	:	
Governor's Administration Office,	:	
and, American Federation of State,	:	
County, and Municipal Employees,	:	
(AFSCME),	:	
Appellees	:	

Supplement to Appellant's Brief "Writ of Certiorari, before Judgment".

Notice is hereby given, this Wednesday, August 6,1980, that, Nicholas Mazur, Pro se, Appellant, hereby submits as a supplement, the United States Court of Appeals, for the Third circuit, Motion of Denial of Summary Judgment, requested by the Appellant., which is to be filed with my brief requesting Petition for Writ of Certiorari, for judicial review under the broad and encompassing powers of Certiorari. Conditions granting Certiorari exists in the proceedings of lower Courts, in support of Appellant's request(s) are as follows:

(1). Overriding of defaults and granting with discrimination, which would be controversial to accepted and usual course of judicial proceedings.(see U.. S. Constitutional Amendment V, P1163; Carter vs. Carter Coal Co, 298 U.S. 238(1936); Brown vs. Board of Education;Bolling vs. Sharpe.)

P-2(cont'd.):

(2). When a Federal Court of Appeals has rendered a decision , in conflict with the decision of another Federal Court of Appeals, on the same matter, or has decided a Federal questionin a way in conflict with a State Court of Last Resort, or has so far departed from the accepted and usual course of Judicial proceedings , or so far sanctioned such a departure, by a lower Court, as to call for an exercise of this Court's power of supervision. (see Amendment V of U.S. Consitution.).

(3).When a state court or a Federal Court of Appeals has decided an important question of Federal Law, which has not been, but should be, settled by this Coirt, or has decided a Federal question in a way in conflict with applicable decisions of this Court. (see Appendix" A" of this Brief-Dept. of Justice Official Opinion No. 76-3-Kane vs. Pulakos,Pa. Dept. of Transp.; and, Appendix " B" of this brief- Pa. Arbitration decision-10/20/78.)

SUMMARY

Petition for Review by Writ of Certiorari, before judgment, should be granted upon case being of imperative Public importance, as to justify the deviation from normal Appellate practice and to require settlement , in this Court.(see Rule 18; 28 U.S.C. § 2101; U.S. vs Bankers Trust co. 291U.S.240(1935); Railroad Retirement Bd. vs. Alton R. Co.295U.S. 330(1935);

SALLY MRVOS
THOMAS F. QUINN
CLERK

OFFICE OF THE CLERK
UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT
21400 UNITED STATES COURTHOUSE
INDEPENDENCE MALL WEST
601 MARKET STREET
PHILADELPHIA 19106

TELEPHONE
215-597-2995

July 31, 1980

Re: Mazur, Nicholas, Appellant vs. Commonwealth of Pennsylvania, etc., et al.

No. 80-1474

Gentlemen:

Enclosed herewith is conformed copy of order entered by the Court today inthe above-entitled case.

Very truly yours,

Sally Mrvos

Sally Mrvos, Clerk

MRF:sms
Enclosure
Copies to all Parties

Page 6a

July 14, 1980

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 80-1474

MAZUR, NICHOLAS,
Appellant
vs.

COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF TRANSPORTATION, CIVIL SERVICE COMMISSION, GOVERNOR'S ADMINISTRATION OFFICE, AND AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES UNION (AFSCME)

(E.D. Pa. Civ. No. 79-4072)

Present: ALDISERT and SLOVITER, Circuit Judges

Submitted is appellant's motion for summary judgment

in the above-captioned case listed for August 4, 1980 or as the Court decides.

Respectfully,

Clerk

TFQ:MDB:clp
cnc:

The foregoing Motion is/are Denied

By the Court,

Judge

Dated: July 31, 1980

RELIEF REQUESTED BY THE APPELLANT

And Now, Nicholas Mazur, Appellant/Pro se, prays for relief, from the Court, from the grievances caused by the Appellees, they are:

(a). Re-instatement to the Pennsylvania Civil Service Register and Employment rolls, at the entrance Level, or higher, as a Real Estate Administrator I, with the seniority time earned in the service of the Commonwealth of Pennsylvania, which would be from April 22,1972 to date of return, plus my military time */5//43 to 6/28/46 and 2/1/48 to 3/22/51, from which I was honorably discharged .

(b) re-imbursement for loss wages at double my earnings, in accordance with state law, at $50,000 per year for ten years, covering my time to age 65.

(c). Upon return to the rolls, I am to be immediately put on employment disability , at maximum rate, since the trauma harassment , tension, and anxiety has now made me 100% disabled.

(d). Re-imbursement for duplicating costs; office expenses; secretarial services, over the two years , amounting to $45,000.00.

Signed by:
Nicholas Mazur,
Appellant/Pro se.

Docket No. 79-2055
United States Supreme Court

APPENDIX

FINDINGS OF FACTS

HEREWITH

DEPARTMENT OF JUSTICE
OFFICIAL OPINION No. 76-3

Opinion of the Attorney General Kane
to
Hon. George S. Pulakos, Acting Secretary
of the Pennsylvania Department of Transportation.

APPENDIX "A"

Military Employment Preference

Words and phrases—"War"—"Soldier"—Undeclared armed conflict—Preference in Public Employment Act—Veterans—Seniority.

1. The term "soldier" within the purposes of Chapter 71 of the Military Code (the preference in Public Employment Act of May 22, 1945, P.L. 837) means one who has served in the armed forces of the United States or women's organization officially connected therewith during a war or period of armed conflict such as Vietnam, in which the United States is involved.

2. The term "war" within the context of section 7107 of the Military Code means either a formally declared war, or an undeclared armed conflict.

3. The Military Code, 51 Pa.C.S. §7107, requires that whenever a reduction in force is necessary in any public position and personnel are discharged according to seniority, the total amount of seniority of any soldier as defined by Chapter 71 of the Military Code shall be determined by adding his amount of seniority in the civil service or public works to his total years of service in the armed forces of the United States or any women's organization connected therewith, during any declared war or armed conflict in which the United States was involved.

Opinion of the Attorney General to Hon. George S. Pulakos, Acting Secretary of Transportation. Department of Justice, Official Opinion No. 76-3.

KANE, *Attorney General*, February 23, 1976—We have received a request for an opinion from your department interpreting the Preference in Public Employment Act of May 22, 1945, P.L. 837, 51 P.S. §§492.1, et seq., as amended.[1] Specifically, you have asked whether a former soldier in the armed forces of the United States, or member of any women's organization connected therewith, may take advantage of the additional seniority provision of the Act, 51 Pa.C.S. §7107, if he or she served during a time of armed conflict rather than receiving credit for additional seniority only if he served during a time of declared war. You are hereby advised that a former soldier in the armed forces of the United States, or member of any women's organization connected therewith, is entitled to the additional seniority as provided in section

1. This statute was codified by the Act of August 1, 1975, P.L. 216, 51 Pa.C.S. §§7101, et seq., without change, and became effective January 1, 1976.

7107 of the Military Code if he or she served either during a time of armed conflict or of declared war.

Section 7107 of the Military Code reads:

"Whenever a reduction in force is necessary in any public position . . . and personnel are discharged according to seniority, the number of years of service of any soldier shall be determined by adding his total years of service in the civil service or on public works to his total years of service as a member of the armed forces of the United States, or any women's organization officially connected therewith *during any war in which the United States engaged.*" (Emphasis supplied.)

There are two issues that must be resolved prior to the resolution of your question; what is the definition of "soldier" within the code, and what is meant by the term "war" as it is used in section 7107 of the Military Code.

The term "soldier" was defined in the original 1945 Act as a "person who served in the armed forces of the United States or in any women's organization officially connected therewith, during any war in which the United States engaged . . . and who has an honorable discharge from such service." In 1945, the Act was amended to insert the words "or armed conflict" after "during any war." In 1966, the act was amended specifically to include Vietnam veterans. Finally, the act was amended in 1972 so that the term "soldier" is currently defined as:

". . . a person who served in the armed forces of the United States, or in any women's organization officially connected therewith, during any war or armed conflict in which the United States engaged, or who so served or hereafter serves in the armed

forces of the United States, or in any women's organization officially connected therewith, since July 27, 1953, including service in Vietnam, and who has an honorable discharge from such service." 51 Pa.C.S. §7101.

It is clear that the term "soldier" within the meaning of the act, is one who has served or who shall serve in the armed forces or connected women's organizations during a war or armed conflict, such as Vietnam.

The question of what was intended by the word "war" in section 7107 of the Military Code, poses a more difficult question. Did the General Assembly intend to limit it to a declared war only, or did it intend to include undeclared wars and armed conflicts between the United States and other sovereigns?

General definitions of "war" are not very helpful. Black's Law Dictionary defines "war" as:

"Hostile contention by means of armed forces, carried on between nations, states, or rulers, or between parties of the same nation or state . . . [or] a contest by force between two or more nations, carried on for any purpose or armed conflict or sovereign powers or declared and open hostilities, or the state of nations among whom there is an interruption of pacific relations, and a general contention by force, authorized by the sovereign." Black's Law Dictionary 1754 (4th ed. 1968).

Such a definition is hopelessly broad and does not relate to the statute in question.

Several Pennsylvania decisions have construed the term "war" in order to decide whether it is limited to declared wars or includes armed conflicts between the United States and other nations. In

Beley v. Pennsylvania Mutual Life Insurance Co., 373 Pa. 231, 95 A.2d 202 (1953), and Harding v. Pennsylvania Mutual Life Insurance Co., 373 Pa. 220, 95 A.2d 221 (1953), the Pennsylvania Supreme Court considered the question of whether the beneficiary of a life insurance policy could collect double indemnity under a provision of the contract if the insured was killed in the armed forces during a time of war, where the insured was killed in the Korean conflict. In both cases, the court held that the action in Korea was not a war in the constitutional or legal sense of the word. The court implied that only a declared war could, in fact, be considered a war under the terms of the insurance contract. The rationale for the court's decision was that if the definition of "war" were expanded to include armed conflicts, then the courts would have no criteria to determine what was a war and what was merely shooting short of war. The court stated that:

"The existence or non-existence of a state of war is a political, not a judicial, question, and it is only if and when a formal declaration of war has been made by the political departments of the government that judicial cognizance may be taken thereof." Beley v. Pennsylvania Mutual Life Insurance Co., 373 Pa. 231, 237, 95 A.2d 202, 205 (1953).

In Thomas v. Metropolitan Life Insurance Co., 388 Pa. 499, 131 A.2d 600 (1957), the court again considered a claim by a life insurance beneficiary that he was entitled to an additional payment because the insured was killed in a war: the Korean conflict. The court stated that it was bound by its previous rulings in Beley and Harding supra, in the

Beley v. Pennsylvania Mutual Life Insurance Co.,373 Pa. 231, 95A.2d 202(1953), And Harding v. Penna. Mutual Life Insurance Co; 373 Pa.270,95A.2d 221L1953), the Pennsylvania Supreme Court considered the question of whether the beneficiary of a life insurance policy could collect double indemnity under a provision of the contract, if the insured was killed in the armed forces during a war. where the insured was killed in the Korean conflict, in both cases, the court held that the action in Korea was not a war, in the constitutional or legal sense of the word. The court implied that only a declared war could, in fact, be considered a war under the terms of the insurance contract. The rationale for the court's decision was that if the definition of "war" were expanded to include armed conflicts, then the courts would have no criteria to determine what was a "war" and what was merely a shooting sort of a war. The court stated that:

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insurance contract. However, the majority took pains to limit its decision to the particular facts of the case. Further, the court, in adopting the lower court's opinion, admitted that:

"'It becomes very clear then that hostilities between nations can become war whether solemnly declared or not. War of the perfect kind, solemnly declared, is called declared war. War of the imperfect kind that has not been baptized with the name by Congress is known as undeclared war.'" Thomas v. Metropolitan Life Insurance Co., 388 Pa. 499, 507, 131 A. 2d 600, 604 (1957).

The court in Thomas interpreted Beley and Harding as defining two types of war, declared and undeclared. However, when interpreting the language of an insurance contract, for the sake of clarity and uniformity, the court held that the definition should be limited to that of a declared war.

In Morgan Estate, 2 D. & C. 2d 480 (Luz., 1954), the question arose as to the construction of section 1(b) of the Wills Act of April 24, 1947 (now Act of June 30, 1972, P.L. 508, as amended, 20 Pa.C.S. §2501), which allows a minor in the armed services, in time of war, to dispose of his property by will. The court, after acknowledging the Beley and Harding cases, announced that it would not be bound by their limited definition of "war." Instead, the court chose to define "war" in its popular sense, that is to include both declared and undeclared conflicts. The court (in an opinion by Orphans' Court Judge Benjamin R. Jones, now Chief Justice of the Pennsylvania Supreme Court) distinguished the previous cases by noting that here it was dealing with an enactment of the legislature and not with a private insurance contract.

Finally, other States and the Federal courts have

considered the definition of "war." In Morrison v. United States, 316 F. Supp. 78 (M.D. Ga., 1970), the question arose as to whether the Vietnam conflict was a war within the definition of the Federal Tort Claims Act. The act proscribes recovery for "[a]ny claim arising out of the combatant activity of the military or naval forces or the Coast Guard during time of war." 28 U.S.C. §2680(j), June 25, 1948, 62 Stat. 984, as amended. The court unanimously held:

"While it may be true that a de jure state of war cannot exist without a formal declaration of war, a war is no less a war because it is undeclared." 316 F. Supp. 78, 79 (M.D. Ga., 1970)

Several courts of other States have held likewise: Langlas v. Iowa Life Insurance Co., 245 Iowa 713, 63 N.W. 2d 885 (1954); Western Reserve Life Insurance Co. v. Meadows, 152 Texas 559, 261 S.W. 2d 554 (1953); Stankus v. New York Life Insurance Co., 312 Mass. 366, 44 N.E. 2d 687 (1942); Stanbery v. Aetna Life Insurance Co., 26 N.J. Super. 498, 98 A. 2d 134 (1953).

The preceding cases, while not controlling, are helpful in our analysis. They acknowledge that war may be interpreted either narrowly or broadly, depending upon the construction which the framer intended. Surveying all of the cases,[2] Morgan Es-

2. Recently Commonwealth Court in Shank v. Everett Area School District No. 639 C.D. 1975 (Jan. 23, 1976), ruled that a man who volunteered for military service during the Vietnam conflict could not avail himself of section 1176 of the Public School Code of 1949, Act of March 10, 1949, P.L. 30, as amended, 24 P.S. §11-1176, which permits a public school employe a leave of absence if he volunteers for duty "in time of war or during a state of national emergency." The court held that during the Vietnam conflict there was no declaration of

tate is clearly the most applicable to the question at hand as it is a Pennsylvania case construing a legislative enactment.

The Statutory Construction Act of November 25, 1970, P.L. 707, 1 Pa.C.S. §1924, permits the title and preamble of a statute to be considered when interpreting a statute. The original act, when passed in 1945, was titled:

"Providing for and requiring in certain cases preference in appointments to public position or on public works for honorably discharged persons who served in the military or naval service during any war in which the United States engaged . . ." Act of May 22, 1945, P.L. 837.

The 1955 amendment to the act specifically provided for the preference in hiring and retention of veterans of armed conflicts and not merely those men and women who served in time of declared war. The act has been amended twice since 1955 and on both occasions the title has included the above phrase. The title of the act is evidence that the General Assembly intended that veterans of

---

war or national emergency. The implication in Shank is that a conflict must be declared to be a war. However, Shank should not be viewed as controlling for several reasons. First, the court in Shank dealt with the Public School Code rather than Chapter 71 of the Military Code. This becomes even more significant when one realizes that the reasons for construing "war" to include an undeclared conflict in the Military Code do not exist in the Public School Code, i.e., the language that exists in the title to the Preference in Public Employment Act and the broad definition of the term "soldier" in the Code as are discussed later in the text of this opinion. Also, the court in Shank was never directly presented with, nor did it fully consider, the question of whether the Vietnam conflict fit within the definition of the word "war." Finally, the authorities previously cited in this opinion far outweigh the implications in Shank.

armed conflicts, as well as those of declared wars, should be given seniority preference.

Further evidence of the intent of the legislature can be had by substituting the definition of the term "soldier" for the word "soldier" in the particular provision. Substituting the definition, the statute reads:

"Whenever a reduction in force is necessary in any public position, or on public works of the Commonwealth . . . the number of years of service of any [person who served in the armed forces of the United States . . . during any war or armed conflict in which the United States engaged] shall be determined by adding his total years of service in the civil service or on public works to his total years of service as a member of the armed forces . . . during any war in which the United States engaged." 51 Pa.C.S. §7107.

If the term "war" in this section is construed to include only a declared war, then the section loses its meaning. The statute, when interpreted in the above manner, allows preference for those who served in the armed forces during time of war or armed conflict but only if they served during a declared war. Such an interpretation makes little sense. A far more reasonable construction would allow preference for those who served either during an armed conflict or time of declared war. When seeking the intent of the legislature, there is always a presumption that the General Assembly did not intend a result which is absurd or unreasonable: 1 Pa.C.S. §1922(1).

A further question concerns the duration of a war or armed conflict; that is when, for the purposes of the act, does a conflict begin and end? Decisions that have dealt with the beginning of a war or

armed conflict have concluded that a war or conflict begins with the opening of hostilities: Stinson v. New York Life Insurance Co., 167 F. 2d 233 (D.C. Cir., 1948); New York Life Insurance Co. v. Bennion, 158 F. 2d 260 (10th Cir., 1946); Beley v. Pennsylvania Mutual Life Insurance Co., 373 Pa. 231, 95 A. 2d 202 (1953); Darnall v. Day, 240 Iowa 665, 37 N.W. 2d 277 (1949). Therefore, a war or armed conflict begins when the United States becomes involved in the hostilities.

Several courts also have considered the issue of the end of a war or armed conflict. It is clear that a declared war ends upon the cessation of hostilities rather than the signing of a formal peace treaty and Pennsylvania cases have so held: Beley v. Pennsylvania Mutual Life Insurance Co., 373 Pa. 231, 95 A. 2d 202 (1953); Harding v. Pennsylvania Mutual Life Insurance Co., 171 Pa. Superior Ct. 236, 90 A. 2d 589 (1952), affirmed, 373 Pa. 270, 95 A. 2d 221 (1953). The courts of other jurisdictions are in accord: New York Life Insurance Co. v. Durham, 166 F. 2d 874 (10th Cir., 1948); Stinson v. New York Life Insurance Co., 167 F. 2d 233 (D.C. Cir., 1948); Langlas v. Iowa Life Insurance Co., 245 Iowa 713, 63 N.W. 2d 885 (1954). Further, although the preceding decisions dealt with declared wars, the language employed by the various courts makes it clear that they would apply the same logic to an undeclared conflict.

"[I]t is the common understanding that a war is no longer a war when the shooting is ended, regardless of official pronouncements . . . 'War in the practical and realistic sense in which it is commonly used, refers to the period of hostilities'.": Langlas v. Iowa Life Insurance Co., 245 Iowa 713, 720, 63 N.W. 2d 885, 889 (1954).

Such a decision only makes sense. If an official

pronouncement is not necessary to begin an undeclared war, as is necessary to begin a declared war, there is no reason why an official pronouncement should be relevant to end an undeclared conflict if it is irrelevant to the end of a declared war.

For the purposes of the Military Code, a declared war or armed conflict begins with the opening of hostilities and ends with the cessation of the action. Using the above criteria, it is possible to determine the exact dates, for the purposes of the code, of recent conflicts involving the United States. World War I began with the declaration of war on Germany on April 6, 1917, and ended on November 11, 1918, with the signing of the peace treaty. World War II began with the attack on Pearl Harbor on December 7, 1941, and ended with the signing of the peace treaty with Japan on September 2, 1945. The duration of the Korean conflict was from June 25, 1950, when the North Koreans attacked to July 27, 1953, which was the date of the cease fire at Panmunjom. The Vietnam hostilities began on August 5, 1964, with the Gulf of Tonkin incident and ended with the signing of the Paris Peace Accord on January 28, 1973.

When attempting to define "war," one must keep in mind a historical perspective. The original act was passed in 1945. At that time the term "war" had quite a different connotation than it does today. In 1945, World War II had just ended and World War I was still recent history. All large scale conflicts were formally declared wars. Today the large conflicts of recent memory, Korea and Vietnam, were not declared wars; but were waged on a scale and intensity approaching that of previously declared wars.

Finally, when examining the history of the act, it can be seen that the act was broadened several

times by amendments. The major amendments were in 1955, 1965 and 1972. The 1955 amendment expanded the title of the act to include armed conflicts and also expanded the definition of "soldier" to include those who served during armed conflicts as well as declared wars. The 1965 and 1972 amendments again broadened the definition of "soldier" to specifically include Vietnam veterans. In short, the General Assembly has acted to expand the coverage of the act to include each of the major undeclared armed conflicts in the last 25 years in which the United States was involved. In order to effect the intent of the General Assembly, and to be consistent with the evolution of the act, a broad interpretation should be given to the term "war" as it is used in section 7107 of the Military Code.

In conclusion, it is our opinion, and you are hereby advised, that section 7101 of the Military Code, 51 Pa.C.S. §7107, should be interpreted as granting to those veterans who meet the act's definition of "soldier" additional seniority, to the extent of the time they served in the armed forces of the United States during a declared war or armed conflict in which the United States was involved.

In re Summit House

Taxation—Real property taxes—Condominium—Uniformity of assessment in comparison with similar tenanted properties.

The requirement of the Pennsylvania Constitution, article VIII, section 1, for uniformity of taxation upon the same class of subjects requires that the assessment of the total number of units in a condominium be no greater than the assessment of a comparable building occupied by tenants, despite the argument that the market value of all of the units in the condominium is greater.

S-4

DEPARTMENT OF TRANSPORTATION
October 20, 1978

REFER TO

U.S. Court of Appeals attention is requested Herell

NOTE: VIOLATION OF JUDICIAL OPINION #6-3 DATED: 2/23/76 - ATTY. GEN'L KANE OF U.S. SUPREME COURT. ACTION TOOK AWAY CIVIL / PUBLIC SERVICE TIME THAT SHOULD HAVE BEEN ADDED TO "SOLDIER'S" MILITARY TIME SEE - "MOTION FOR AMENDED FINDINGS - OF FACTS."

ATT.. 1723 334M 166122803
N. MAZUR
306 W. CENTER ST.,
SHENANDOAH, PA. 17976

PA
17901

Based on several grievances submitted by AFSCME, the Department of Transportation recently received an Arbitration decision concerning the implementation of furloughs and the calculation of seniority for employes affected by furloughs on June 30, 1978 and September 1, 1978. The arbitrator ruled that seniority credit for employes in the Transportation Construction Inspector 3 class was improperly calculated. This also affects Real Estate Specialist Supervisors and Real Estate Appraisers 3. This resulted from Executive Board classification changes which in turn created bargaining unit changes for employes in these classifications.

The arbitrator ruled that the bargaining unit seniority these employes earned prior to the classification changes should not have been credited toward the bargaining unit seniority earned after the classification and bargaining unit changes were made. As a result, the Department was directed to recompute seniority for these affected individuals and consequently to determine who should have been furloughed or bumped based on these new seniority calculations.

As a result, some employes were improperly furloughed or bumped. Correspondingly, some employes were improperly retained or bumped. You are one of the employes affected by this recalculation and were improperly retained. Therefore, in order to comply with the arbitrator's decision, we have been directed to reinstate another employe in your classification who was improperly furloughed. You regrettably, must be furloughed instead. This furlough will be effective at the close of business November 1, 1978. Your District Office will meet with you to answer any questions you may have as well as to discuss and provide counseling relative to your furlough status.

I sincerely regret that this action is necessary, but we, unfortunately, have no choice based on the arbitration decision. You have 20 days from the receipt of this letter to file an appeal with the

Referenced Pages 46,47,48,
and 49 of Appellant's
Brief dated 2/15/80.

Page 9
APPENDIX "B" P17 5

State Civil Service Commission regarding this action, if you choose to do so. An extract from the Civil Service Act explaining your appeal rights is attached.

Very truly yours,

John Harhigh, Director
Bureau of Personnel

Attachment

Referenced pages:46,47,48
and 49 of Appellant's
Brief, dated 2/15/80

APPENDIX "B" P27 5

Date Prepared 10-20-78

District Central Office

Class Title Real Estate Spec. III-1723

Parenthetical

Bargaining Unit B-1

"B" List (Bumping List, All Current Incumbents of Class Plus Those Eligible to Bump)

Name	Bargaining Unit Service Date	Action Taken/ Other Classes
Prinkey, M. P.	11-10-63	* RE-INSTATEMENT BY FEDERAL
Walter, J. H.	9-10-66	COURTS REQUESTED WOULD BE
Reefer, J. H.	6-5-69	AS FOLLOWS #
Shenk, F. T.	5-20-71	N. MAZUR - R/W ADM. - 9-12-68
Romig, M. V.	9-15-71	J. H. REEFER 6-5-69
Gross, R. C.	1-22-72	F. T. SHENK 5-20-71
Lehr, D. W.	8-11-72	V. M ROMIG 9-15-71
Seitz, D.	9-6-72	R. C. GROSS 1-22-72
[illegible]ur, N.	7-27-75	D. W. LEHR 8-11-72
[illegible]L. R. D.	3-3-77	O. R. PAUL 3-3-77

U.S. Court of Appeals attention is called HERE!!!

* * THE REVISED STANDING, LISTED ABOVE, WOULD BE APPROXIMATELY THE SENIORITY STANDINGS, IF U.S. SUPREME COURT MAKES THE STATE OF Pa. HONOR THE JUDICIAL OPINION # 76-3, 2/23/76, 73 D&C, P74 to P752.

Referenced Pages: 46,47,48 and 49, of Appellant's brief dated 2/15/80.

APPENDIX "B"

P 36 *

10/20/78

ARBITRATION AWARD FACT SHEET

I. Seniority Dates

A. Those employes improperly furloughed who are returning to work will have seniority credited as if they never left.

B. Those eligible to return but who do not accept reemployment will have seniority credited retroactive from November 3, 1978 to their furlough date. If did not return October 23, 1978, show as LWOP but still give seniority credit.

C. Those eligible to return but do not because they would be furloughed on November 8, 1978 will be shown as LWOP from October 23, 1978 to November 8, 1978, furloughed at close of business November 8, 1978 and will have seniority credit to November 8, 1978.

D. Employes improperly bumped are restored to their proper levels effective October 23, 1978. However, their seniority is to be credited toward what should have been their proper class and/or bargaining unit retroactive to their original "improper" bumping date (July 1, 1978 or September 2, 1978). This applies to both downward and upward restoration.

II. Recall Provisions

A. Those employes furloughed on November 1, 1978 will have three years of recall rights starting from the date they should have been furloughed, either July 1, 1978 or September 2, 1978. They will be merged with persons on recall lists from those dates. For recall purposes only, seniority credit earned after the furlough date will be subtracted so that their relative seniority with others furloughed on either July 1, 1978 or September 2, 1978 remains consistent.

B. Employes improperly furloughed who choose not to return to work lose recall rights because they refused recall.

C. Employes improperly furloughed, who could come back, but do not because they will be furloughed on November 8, 1978 are treated as if furloughed on November 8, 1978.

D. Recall rights for employes who are bumped to lower levels on October 23, 1978 begin on the date they should have been bumped, either July 1, 1978 or September 2, 1978. For example, a Trans. Const. Insp. 3 who was bumped to Trans. Const. Insp. 2 on October 23, 1978, but who should have bumped on September 2, 1978, will have recall rights to Trans. Const. Insp. 3 which begin retroactive to September 2, 1978 and continue for three years.

Referenced Pages: 46,47, 48, and 49, of Appellant's brief dated 2/15/80.

APPENDIX "B" P4 & 5

Case n 80-1474
United States Court of Appeals- Third Circuit

HISTORICAL CLASS/SENIORITY CHANGES, GENERATED FROM APPELLEES ACTIONS ON THE APPELLANT STATUS

Ref. no.	Class Holding	Time/Date In Effect	Seniority Class Standing	By What Directive or Achievement	Seniority Time Application Civil Service (Plus) Military (As of 8/4/80)	
1	R.E.SIV	4-10-77	#1 of 4	Civil Service	8YRS.4mos/3/days	3Yrs/7mos/10Days
2.	R/W ADM	8-29-77	#4 of 4	PennDot Ltr.8/29/77	none	3Yrs/7mos/10Days
3.	R.E.S.III	2-6-78	#6 of 11	PennDot Ltr.2/16/78	4Yrs/7mos/26days	2Yrs/3mos/16Days
4.	R.E.S.III	10-20-78	#9 of 11	Gov. Ofc.Arb. Case 10/20/78	none	2yrs.3mos/16Days
5..	R/W Adm or R.E.S.IV	8-4-80 U.S.Ct.of Appeals	#1 of 3	U.S. Court of Appeals hearing -8/4/80	8Yrs/4mos/3Days	3Yrs/7mos/10Days.

FLOW PROCESS CHANGE CHART FROM CLASS TO CLASS PER APPELLEES DIRECTIVES

Original Appellant'sCLASS achieved through Civil Service was R.E.S.IV.

Step(s)	Class	By What Directive and/or Achievement
1	R.E.S. IV	Civil Service Tests
2	R/W/ Adm.I	
3	to R.E.SIII and/or R.E.S.III(Suprv.) (Pay grade Change) : (No pay grade change)	PennDot Ltr. 3/29/77
4	R.E.S.III Loss of Civil Service Time : R.E.S.III(Suprv.) (no changes)	PennDot Ltr. 5/3/77 and AFSCME Ltr. 5/5/77. and. Gov. Ofc.Arb. Case 10/20/78

APPENDIX "B"

Legal by: Orichello, Grogan, Graf & Slavin
Appellant's Counsel